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JUN 23 1964
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 124

BENJAMIN H. SAUNDERS,
Executor of the Estate of Sophus Dee Hanson, deceased

and

BARBARA ELIZABETH HANSON,
Sole Heir and Residuary Legatee under the Will of
Sophus Dee Hanson, deceased, *Petitioners*,

v.

ANNE BAKER BEIN HANSON, *Respondent*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1156

BENJAMIN H. SAUNDERS,
Executor of the Estate of Sophus Dee Hanson, deceased

and

BARBARA ELIZABETH HANSON,
Sole Heir and Residuary Legatee under the Will of
Sophus Dee Hanson, deceased, *Petitioners*,

v.

ANNE BAKER BEIN HANSON, *Respondent.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is reported at 210 F. Supp. 377. The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 327 F. 2d 889, — U.S. App. D.C. —.

JURISDICTION

The decision of the United States Court of Appeals for the District of Columbia Circuit was dated December 26, 1963. Petition for rehearing *en banc* was denied by that Court *en banc* on February 28, 1964. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254.

QUESTIONS PRESENTED

The questions presented are:

1. Should this Court review the long settled case law of the District of Columbia that upon the death of one of the parties prior to the passage of the statutory six months period from the entry of a divorce decree, the divorce is abated and the other party is the surviving spouse?

2. Should this Court again review the well established principle that where the decedent himself was estopped to raise certain issues, the petitioners, as his privies, are also estopped?

3. Should this Court again review the well established principle that where the petitioners would have had no standing in the courts of the State of Florida to seek to attack respondent's prior Florida divorce, the petitioners could not do so in the courts of the District of Columbia?

CONSTITUTION AND STATUTES INVOLVED

The respondent accepts the statement by the petitioners as to the provisions of the Constitution and of the statutes involved.

STATEMENT OF THE CASE

The respondent adopts for her Statement of the Case the facts as found in the Memorandum Opinion of the trial court, reported at 210 F. Supp. 377. (See also Joint Appendix filed herein, pp. 89-91).

Additionally, the petitioners (as appellants below) by their brief presented to the Circuit Court below only the

first question as set forth in their pending petition, and not the two additional questions stated under heading "2." of their pending petition. Only upon their petition for rehearing by the court below, *en banc*, were such questions raised below by these petitioners. By its order of February 28, 1964, the Circuit Court below *en banc* denied a rehearing.

REASONS FOR DENYING THE WRIT

1. It Is Settled Law Under the District of Columbia Statute That the Divorce Between Petitioners' Decedent and Respondent Abated Upon the Death of Petitioners' Decedent

The Circuit Court opinion in affirming this case below sets forth:

> "* * *. The Statute says 'no such final decree (for absolute divorce) shall become absolute and take effect until the expiration of six months after its date.' This court in *Oliver* v. *Oliver*, 87 U.S. App. D.C. 334, 336, 185 F. 2d 429, 431 (1950), pointed out:
>
> > 'This contemplates a provisional decree of divorce only, which cannot mature and become effective until lapse of the intervening time.'
>
> 'We held in *Wesley* v. *Brown*' (90 U.S. App. D.C. 351, 196 F. 2d 859, 1952), 'that death of one of the parties during the six month period following a divorce decree abated the action. Again, in *Dillard* v. *Dillard*,' (107 U.S. App. D.C. 214, 218, 275 F. 2d 873, 882, 1960) 'discussing the underlying policy of our law, we said the District of Columbia statute
>
> > 'adopts and clearly expresses the broad policy of postponing for six months, *and for all purposes*, the effective date of any decree of absolute divorce granted in the District of Columbia.' (Emphasis added.)"

The actual language of the statute concerned, Title 16, Section 421, District of Columbia Code, 1961, is in material part that "No final decree—dissolving a marriage shall be effective to —dissolve the marriage until the expiration of

the time allowed for taking an appeal, nor until the final disposition of any appeal taken, and every final decree shall expressly so recite. Every decree for absolute divorce shall contain the date thereof and no such final decree shall be absolute and take effect until the expiration of six months after its date."

The petition (p. 11) argues that there is "no plausible reason for the *Wesley* interpretation" of this section of the law, and that "Public policy is not involved."

The respondent asserts on the contrary that there is a "plausible reason", and that public policy is involved. The legislature chose that particular language, and the language is clear and unambiguous. Just prior to the enactment of that present statutory provision, this Court had held in *Loughran* v. *Loughran*, (1934), 292 U.S. 216, 54 S. Ct. 684, 78 L. Ed. 1219, rehearing denied 292 U.S. 615, 54 S. Ct. 861, 78 L. Ed. 1474, that a mere prohibition against remarriage in a divorce decree has no extra-territorial effect, and that a remarriage outside of the jurisdiction granting the divorce is valid, despite a prohibition of remarriage in the decree of divorce.

By adopting the statutory language here involved, the legislature insured that there could be no valid remarriage anywhere, because the decree did not become effective to dissolve the marriage until the passage of six months. Certainly such a public policy, of making hasty remarriage impossible, was within the power of the legislature to adopt, and the statute enacted certainly serves the public policy sought to be effectuated.

As seen from the opinion of the Circuit Court below, in the cases there cited, it is settled law in the District of Columbia that the decree did not become operative to dissolve the marriage of the respondent and petitioners' decedent, and it abated upon the death of the petitioners' decedent. That Court, en banc, refused to reconsider this case, and its prior decision on this point. Even Judge Burger, in his

concurring opinion below (see Appendix A of petitioner's brief, p. 3a) stated that he agreed that the "holding in *Wesley* v. *Brown*, 90 U.S. App. D.C. 351, 196 F. 2d 859 (1952), was binding on the district court and requires an affirmance with respect to the construction of the D. C. Code Ann. S. 16-421 (1961)."

2. It Is Settled Law That Where Petitioners' Decedent During His Lifetime Was Estopped to Question the Validity of His Marriage to Respondent and of Respondent's Prior Florida Divorce, the Petitioners, As His Privies, Are Also Estopped

It is significant that the petitioners do not here address themselves at all to the matter of the question of estoppel of the petitioners, as privies of the decedent, to question the validity of the marriage between the respondent and their decedent. The district judge in his opinion (See Joint Appendix, pages 101 and 102) recited the facts establishing the estoppel, and held that the doctrine of estoppel "clearly applies in the present case". As the district court opinion pointed out (Joint Appendix, pages 102 and 103, including footnote 3), the petitioners were in privity with the decedent, and all privies are estopped from litigating that which is conclusive with whom they are in privity. This Court has often affirmed that doctrine (See cases cited, Joint Appendix, page 103, footnote 3), and it is settled law.

The Circuit Court in affirming below, clearly expressed its approval of the opinion of the trial court. Even Circuit Judge Burger, in concurring specially (See: Footnote 6), termed the trial court's opinion as "exhaustive." Respondent believes it should be emphasized here that although Judge Burger believed the Wesley case should be reconsidered by the Circuit Court, he did not address himself whatsoever to the question of estoppel. The matter of estoppel, by itself, should be dispositive of this cause.

3. It Is Settled Law That the Petitioners Could Not Attack Respondent's Prior Florida Divorce in the District of Columbia, Because They Would Have Had No Standing to Attack the Florida Decree in the Courts of the State of Florida

The petitioners strain the facts and the applicability of Section 30-101, D.C. Code (1961) to assert that this case presents important questions under the full faith and credit clause of the Constitution.

Only by totally ignoring the full faith and credit clause of the Constitution could Section 30-101, D.C. Code be given the effect urged by petitioners (Brief, bottom p. 9). The petitioners assert that "Whether this—might also constitute a collateral attack on respondent's Florida divorce decree is incidental only—." They assert that the local statute has lost its effect and purpose, if it is dependent upon the laws of sister states governing collateral attacks upon their decrees. In effect, petitioners argue that the full faith and credit provision of the Constitution must give way to this enactment of Congress. On its face that is a fallacious argument.

The petitioners then argue, p. 10, that even if their complaint below constituted a collateral attack upon the respondent's Florida divorce decree, that the petitioners have such standing to make such an attack under the law of Florida, citing and relying solely upon *State Ex Rel Willys* v. *Chillingsworth*, 124 Fla. 274, 168 So. 249. Petitioners then assert that this Court's decision in *Johnson* v. *Muelberger*, 340 U.S. 581, 71 S. Ct. 474, 95 L. Ed. 552, "is easily distinguishable on its facts." Petitioners, however, fail to tell us how it can be so easily distinguished on its facts.

The petitioners' assertion that the *Chillingsworth* decision, *supra*, "clearly gives petitioner Barbara Elizabeth Hanson the right to question the validity of respondent's Florida divorce" is misleading, at the least. That decision never has been followed by the Supreme Court of Florida in its seven decisions since *De Marginy* v. *De Marginy*

(Florida), 43 So. 2d 442, decided *en banc*, which held that a daughter had no standing to make a collateral attack upon the prior Florida divorce of her step-mother from her father. Further, regarding petitioners' assertion, *Johnson* v. *Muelberger, supra*, clearly stated that *State Ex Rel Willys* v. *Chillingsworth, supra*, "does not so hold," and that "—late opinions of Florida indicate that the child had a mere expectancy at the time of the divorce."

Clearly the present petitioners had no interest nor standing whatsoever at the time the respondent obtained her Florida divorce from her first husband, and could not attack said decree in the courts of Florida. Extending the same faith and credit to the Florida decree in the courts of the District of Columbia, as it is entitled to in the courts of Florida, the courts below in this case correctly applied the requirements of the full faith and credit clause of the Constitution.

The petitioners' also assert that their standing to make this attack under the District of Columbia law is founded on *Sears* v. *Sears*, 110 U.S. App. D.C. 407, 293 F. 2d 884 and *De Parata* v. *De Parata*, (Mun. App. D.C.) 179 A. 2d 723.

The *Sears* case is completely distinguishable in that it involved a Mexican mail order ex parte divorce concerning which the full faith and credit clause had no possible application.

The *De Parata* decision also is clearly distinguishable. In the *De Parata* opinion the appellate court held that the Alabama divorce was subject to attack in the District, because "the Alabama Supreme Court has specifically held that for want of domiciliary jurisdiction, divorce decrees of that State are not entitled to full faith and credit in other jurisdictions", citing *Hartigan* v. *Hartigan*, 272 Ala. 67, 128 So. 2d 725. It must be added that in *Hartigan*, the Alabama Supreme Court also held that such "quickie" one day

divorces were not entitled to any faith or credit even in the State of Alabama, let alone elsewhere.

In contrast to Sears and De Parata, here there was no factual issue whatsoever concerning this respondent's full compliance with the jurisdictional requirements of Florida's law as to her residence there in connection with that divorce. The trial court's decision in this case was rendered on motions by both sides for summary judgment. The sole evidence before the trial court consisted of depositions (including the respondent's) taken by the petitioners. (See: Joint Appendix, pages 17-46). Such evidence completely supported the bona fides of this respondent's residence in Florida prior to her divorce there from her first husband. Nothing to impeach or contradict this evidence was ever offered below by these petitioners.

The petitioners fail to show that this case presents any "important questions under the full faith and credit provision of the Constitution." They similarly fail to show any reason why this Court should reconsider its decision in *Johnson* v. *Muelberger, supra.*

CONCLUSION

In conclusion, respondent submits that the Petition for Writ of Certiorari should be denied because (1) the petition fails to show any reason why this Court should review settled matters of local law in the District of Columbia, (2) fails to show any reason for this Court to reconsider its decision in *Johnson* v. *Muelberger, supra*, and fails to show any issue in this case of sufficient importance to justify the time and attention of this Court.

Respectfully submitted,

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